



California Association of 4 Wheel Drive Clubs

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September 6, 2011

Jim Bartel, Field Supervisor
Carlsbad Fish and Wildlife Office
U.S. Fish and Wildlife Service
6010 Hidden Valley Road, Suite 101
Carlsbad, CA 92011

Subject: Docket No. 09-RENEW EO-01/Scoping - Scoping on the Proposed Desert Renewable Energy Conservation Plan EIR/EIS

DRECP Project Coordinator:

These comments are submitted on behalf of the California Association of 4 Wheel Drive Clubs (CA4WDC) and its membership. CA4WDC represents clubs and individuals within the State of California that are part of the community of four-wheel drive enthusiasts. These comments are directed to the *Docket No. 09-RENEW EO-01/Scoping - Scoping on the Proposed Desert Renewable Energy Conservation Plan EIR/EIS*. This document shall not supplant the rights of other CA4WDC agents and organizational or individual members from submitting their own comments and the agency should consider and appropriately respond to all comments received to this EIR/EIS.

While the main focus of CA4WDC is to protect, promote, and provide for motorized recreation opportunities on public and private lands, many of our members participate in multiple forms of recreation; including but not limited to hunting, fishing, camping, hiking, horseback riding, bicycle riding, and gem and mineral collection.

We recognize the positive health and social benefits that can be achieved through outdoor activities. We also recognize that motorized recreation provides the small business owners in the local communities a significant financial stimulus. And, our members are directly affected by management decisions concerning public land use.

Our members subscribe to the concepts of: 1) public access to public lands for their children and grandchildren; 2) condition and safety of the environment; and 3) sharing our natural heritage. The general public desires access to public lands now and for future generations. Limiting access today deprives our children the opportunity to view the many natural wonders of public lands. The general public is deeply concerned about the condition of the environment and personal safety. They desire wildlife available for viewing and scenic vistas to enjoy. They also want to feel safe while enjoying these natural wonders. Lastly, the public desires to share the natural heritage with friends and family today as well as in the future. How can our children learn and appreciate our natural heritage when native species are allowed to deteriorate and historic routes are routinely blocked or eradicated from existence?

CA4WDC supports the concept of managed recreation and believes it is prudent and appropriate management to identify areas where off-highway vehicle use is appropriate. Such

use must be consistent with the public lands management plans, the Plan Standards, and all other requirements found in the Plans, as well as state and federal regulations. Recreation, especially recreation off of paved or gravel roads, is the leading growth in visitors to public lands. Improvements in the planning processes help minimize conflicts and potential resource damage while providing for recreation access to public lands.

The proposed DRECP would establish the structure to integrate renewable energy development and biological resource conservation across the Mojave and Colorado Desert regions encompassing portions of three states: California, Nevada and Arizona.

Pursuant to the National Environmental Protection Act at 42 United States Code section 4371 et. seq. ("NEPA") and its implementing regulations, including 40 Code of Federal Regulations section 1501.7 and 1508.25, this letter is submitted for consideration to determine the range of actions, alternatives, and impacts that require in-depth analysis in the Environmental Impact Report/Environmental Impact Statement ("EIR/EIS"). The comments are extensive, but the complexity and importance of the *Proposed Desert Renewable Energy Conservation Plan EIR/EIS* compel a thorough review of the potential environmental consequences associated with implementation of the project as proposed.

As you know, the EIR/EIS for the *Proposed Desert Renewable Energy Conservation Plan EIR/EIS* (the "Proposed Action") must comply with the provisions of the CEQA/NEPA and its implementing regulations. Those regulations expressly provide that the Proposed Action must evaluate direct, indirect, and cumulative impacts, as well as alternatives to the proposed project that "would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1, 1508.25 (b)(2) and (c).

CA4WDC believes the proposed DRECP should be in compliance with National Environmental Policy Act (NEPA). CA4WDC would like to review NEPA to establish a frame of reference for the comments.

NEPA Review

NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to proposed actions or preferred alternatives analyzed during a NEPA process. 40 C.F.R. § 1502.14; 40 C.F.R. § 1508.9. "[A]gencies shall rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14. The alternatives section is considered the "heart" of the NEPA document. 40 C.F.R. § 1502-14 (discussing requirement in [D]EIS context).

The legal duty to consider a reasonable range of alternatives applies to both EIS and EA processes. *Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1325 (S.D. Cal. 1998) (citing *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir. 1988) ("Alternatives analysis is both independent of, and broader than, the EIS requirement.")).

A NEPA analysis must "explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14 (EIS); *Id.* at § 1508.9 (EA); *Bob Marshall Alliance*, 852 F.2d at 1225 (applying reasonable range of alternatives requirement to EA). A NEPA analysis is invalidated by "[t]he existence of a viable but unexamined alternative." *Resources, Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993).

The reasonableness of the agency's choices in defining its range of alternatives is determined by the "underlying purpose and need" for the agency's action. *City of Carmel-by-the-Sea v. U.S. Dept. of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815-816 (9th Cir. 1987), rev'd on other grounds, 490 U.S. 332 (1989). The entire range of alternatives presented to the public must "encompass those to be considered by the ultimate agency decisionmaker." 40 C.F.R. § 1502.2(e).

The agency is entitled to "identify some parameters and criteria—related to Plan standards—for generating alternatives...." *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1522 (9th Cir. 1992) (italics in original). However, in defining the project limits the agency must evaluate "alternative means to accomplish the general goal of an action" and cannot "rig" "the purpose and need section" of a NEPA process to limit the range of alternatives. *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) (emphasis added).

An agency must perform a reasonably thorough analysis of the alternatives before it. "The 'rule of reason' guides both the choice of alternatives as well as the extent to which an agency must discuss each alternative." *Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1326 (S.D. Cal. 1998) (citing *City of Carmel-by-the-Sea v. United States Dept of Transportation*, 123 F.3d 1142, 1154-55 (9th Cir. 1997)). The "rule of reason" is essentially a reasonableness test which is comparable to the arbitrary and capricious standard. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998) (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 377 n. 23 (1989)). "The discussion of alternatives 'must go beyond mere assertions' if it is to fulfill its vital role of 'exposing the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government.'" *State of Alaska v. Andrus*, 580 F.2d 465, 475 (D.C. Cir. 1978), vacated in part on other grounds, *Western Oil & Gas Ass'n*, 439 U.S. 922 (1978) (quoting *NRDC v. Callaway*, 524 F.2d 79, 93-94 (2nd Cir. 1975)).

Additional Scoping Comments:

CA4WDC acknowledges that the public lands within the Mojave and Colorado Desert regions are classified as multiple use lands within applicable land management plans and open to study for conversion to exclusive use or other legislated purposes. However, it should be noted that within the approximately 25 million acre California Desert Conservation Area encompassing the Mojave Desert region, over 50% of the lands are classified through the planning process or legislation for reserved uses; public lands off-limits to public access.

Forest Service and Bureau of Land Management user surveys note an increasing trend for motorized recreation activities such as driving for pleasure and dispersed camping on public lands. The Mojave and Colorado Desert regions of the proposed project area offers excellent opportunities for addressing this growing trend in recreation desires by the public.

CA4WDC recommends that due consideration be afforded continued motorized access to the Mojave and Colorado Desert regions of the proposed project area. The region is a popular destination spot for multiple forms of recreation; including but not limited to, four wheel drive touring/driving for pleasure, rockhounding, photography, and wildlife viewing. These are activities that cannot be enjoyed, or replicated, in that diversity in other regions.

In reviewing the Proposed Action, CA4WDC finds it deficient in its acknowledgement of the importance of recreation to the Mojave and Colorado Desert regions. Specifically, the proposed Proposed Action fails to acknowledge that various recreational activities exist in the proposed project region.

CA4WDC believes that the loss of access to the Mojave and Colorado Desert regions for recreation opportunity is a direct loss. There are also indirect impacts that would result should this Proposed Action be approved and implemented causing displacement of recreational activities. Those cost include, but are not limited to: (1) the increased enforcement required at other sites when displaced recreational users seek out other areas that may be poorly identified as wildlife preserves or other resource-rich areas; (2) the loss of biological resources or habitat at other sites that displaced recreational users may utilize ; (3) the loss of nature education, (4) the loss of outdoor recreation opportunities, (5) the loss of outdoor access and experiences for children in the community; (6) the loss of familial traditions, custom, and culture of recreational and nature-oriented activities in the region; and (7) the loss of the region's history and traditions, specifically with respect to mining and recreational activities.

The Proposed Action should continue to authorize, maintain, and enhance the recreational use of the land included in the Mojave and Colorado Desert regions covered, including motorized recreation, hiking, camping, mountain biking, sightseeing, and horseback riding, as long as such recreational use is consistent with applicable law and existing land use planning documents.

Continued motorized and mechanized access along routes within the Mojave and Colorado Desert regions covered by the Proposed Action must be deemed a valid use of the public lands. The Proposed Action should exercise all applicable authority to maintain and make these routes available to continued public access, and any administrative decisions regulating access along these routes shall not have the effect of prohibiting or unduly restricting travel by any presently-authorized vehicle type.

There are competing pressures for use of public lands. The Proposed Action is one of several that cumulatively have a negative impact on the public's ability to partake in recreational opportunities on public lands. The Proposed Action must adequately evaluate and mitigate the cumulative losses of land for recreational opportunities, including but not limited to cumulative closures or limitations on desert lands managed by BLM and on forest lands managed by the U.S. Forest Service. Actions that must be evaluated include, but are not limited to, proposed military base expansion, proposed renewable energy development sites, existing and proposed wilderness areas, existing and proposed critical habitat designations, and other existing and proposed land use designations that encompass restrictions to access, including but not limited to National Landscape Conservation System, National Conservation Areas, National Park, and Areas of Critical Environmental Concern.

CA4WDC's position at this point is to continue our strong opposition to the entire proposed project as the loss of recreation opportunity is a significant social and economic impact.

The Proposed Action will serve as a multiple-species Habitat Conservation Plan for California Energy Commission in its application for an incidental take permit under Section 10(a)(1)(B) of the Federal ESA of 1973, as amended (16 U.S.C. 1531 et seq.). The Proposed Action will also serve as a Natural Community Conservation Plan (NCCP) under Section 2800 et seq. of the California Fish and Game Code. The proposed HCP would cover non-Federal lands in the

project area, the proposed NCCP would cover both Federal (to the extent permitted by law) and non-Federal lands, and the possible CDCA Plan amendment would cover BLM-administered lands.

The Proposed Action is intended to advance State and Federal conservation goals in these desert regions while also facilitating the timely permitting of renewable energy projects, and to provide durable and reliable regulatory assurances, as appropriate, under the NCCP and the ESA for renewable energy development on non-Federal land in the Mojave and Colorado Deserts regions. The Proposed Action would help provide for effective protection and conservation of desert ecosystems while allowing the appropriate development of renewable energy projects.

As the proposed project covers non-federal (state and private) and federal lands and would be a stepping stone to application for permits, CA4WDC is concerned about the data that will be incorporated into the analysis of the Proposed Action.

CA4WDC recommends that to preserve data integrity and ensure data quality, all data developed and incorporated into the proposed analysis be collected by State and Federal agencies and maintained within State and Federal databases. Such data must be based on "peer-reviewed" science and reflect current on-the-ground conditions. Data developed as a "computer-model" with the intent to project on-the-ground conditions should not be included as "peer-reviewed" scientific data to be used for recommendations and decision making. Data provided by non-government organizations should not be used to base recommendations and decisions potentially affecting expenditures of public monies.

CA4WDC recommends that impacts on threatened and endangered species and adherence to species mitigation as required for Desert Tortoise recovery and raven predation control be subject to rigorous scientific study and review.

Specifically, the Proposed Action must adequately study the various activities which pose significant threats to the ESA listed species Mojave Desert Tortoise and how the proposed action will adversely impact the Desert Tortoise and other listed species. Such claims of impact and their level of significance must be based on reliable scientific data that are current and supported by standard rules of scientific analysis. That is, studies must: (1) not be biased in their methodology, (2) not draw conclusions based on inadequate sample size, (3) be conducted with sufficient "control" groups, (4) be verified or repeated, and/or (5) not limited to small or localized populations that do not support area-wide or population-wide extrapolations.

The aspects of social, economic, and public health and safety are very important and must be given adequate discussion and analysis. The Proposed Action must contain complete disclosure and analysis of the cumulative loss of recreational access, impacts to public health and safety, and economic impacts of the project on the local and regional communities.

In addition to the economic impacts on the local and regional communities, the Proposed Action must analyze and disclose the cost of the proposed action, including the ongoing, perpetual costs of the proposed renewable energy projects.

The U.S. Government is operating at a dangerous deficit that will continue to grow in the next few years as the already-approved economic stimulus packages are implemented and deficits continue to grow. Environmental spending, including land acquisition and renewable energy

subsidies, apart from being a disproportionately large part of the federal budget, are notoriously wasteful. The Proposed Action must demonstrate to an apprehensive public that the costs of the proposed project have been accurately predicted and can be covered without incurring additional public debt. Additionally, they must review the project alternatives to determine whether there are a more fiscally responsible alternatives to the proposed project that meet the stated purpose and need for the Proposed Action.

The Proposed Action must define clear funding associated to implement which is an additional economic impact on the federal budget over life-cycle of potential projects within the Mojave and Colorado Desert regions covered.

Thank-you,

A handwritten signature in black ink, appearing to read "John Stewart". The signature is fluid and cursive, with the first name "John" and last name "Stewart" clearly distinguishable.

John Stewart
Natural Resources Consultant
California Association of 4 Wheel Drive Clubs